REMARKS

Claims 1-25 are pending in this application. By this Amendment, claims 1-4, 6-13 and 14-22 are amended and claims 23-25 are newly presented.

The Office Action rejects claims 1-8, 14 and 20 under 35 U.S.C. 112, second paragraph. When amending the claims, care has been taken to address these and any other antecedent basis issues. This rejection is now believed to be moot.

The Office Action provisionally rejects claims 1-22 under the judicially created doctrine of double patenting over claims 1-22 of co-pending Application No. 10/660,764 ("'764 application").

The issue in connection with this provisional double patenting rejection is whether any claim in this application defines an invention that is an obvious variation of an invention claimed in the '764 application.

The claims in this application are directed to generating information for controlling an operating condition (e.g., power consumption) of a device. This method is performed off-line, or when the device or system is not in operation. Consequently, an off-line optimization analysis is performed. A variance analysis is performed on the results of the optimization analysis. Data is generated from the results of the optimization analysis that is used, together with results of the variance analysis, to generate management profile information (e.g., power management profile information).

The claims in the '764 application are directed to controlling a system or device, where the goal or result of the claims is to update management profile information based on on-line optimization analysis. While the claims in the '764 application recite steps of performing optimization experiments, performing variance analysis on the optimization experiments results and generating first and second data from the optimization experiments results, these steps are performed on the basis of system or device parameters monitored during actual operation of the system or device.

By contrast, the claims in the present application are directed to generating information for controlling a device or system during an off-line status. The fact that the claims in this application and the '764 application share some common language is not determinative. The manner in which the functions, described by the common language,

are used and the goal or result achieved by the variance analysis processes described in the claims of the instant application and the '764 application constitute non-obvious differences.

It is respectfully submitted that the claims of the present application are not obvious over the claims of the '764 application without impermissibly using the specification of the present application as prior art. It is requested that the provisional double-patenting rejection be withdrawn.

The Office Action makes the following prior art rejections:

1. Claims 9 and 12-21 under 35 U.S.C. 102(a) as allegedly being anticipated by U.S. Patent Publication No. 2003/0097197 to Parent et al. ("Parent").

2. Claims 1, 5-9 and 13-22 under 35 U.S.C. 102(b) as allegedly being anticipated by U.S. Patent no. 5,991,883 to Atkinson ("Atkinson").

3. Claims 10, 11 and 12 under 35 U.S.C. 103(a) as allegedly being unpatentable over Parent in view of Applicant's alleged admitted prior art at pages 17-18 of the specification.

4. Claims 2-4 and 10-12 under 35 U.S.C. 103(a) as allegedly being unpatentable over Atkinson in view of Applicant's alleged admitted prior art at pages 17-18 of the specification.

Independent claims 1, 9 and 17 are directed to generating information for controlling operation of a device or system, where off-line optimization analysis is performed to produce this control information. More specifically, the optimization analysis involves performing optimization experiments to optimize a quality of service measure and an operating condition (e.g., power consumption) of the device or system based on a plurality of control factors for controlling the device or system. A variance analysis is performed on the results of the optimization experiments. Then, from the results of the optimization experiments, the first data (e.g., performance plots and tables) is generated relating each of the plurality of control factors to the quality of service measure and second data (e.g., power consumption plots and tables) relating each of the plurality of control factors to the operating condition (e.g., power consumption). From results of the variance analysis, the first data and the second data, a management profile

is produced that relates the quality of service measure and the operating condition (power consumption). The management profile is the information that is used during on-line or actual operation of the device or system. Support for the amendments to the claims can be found in FIG. 4 (steps 200, 240, 250, 260 and 270) and the corresponding description in the text of the specification for the instant application.

Parent is directed to controlling a manufacturing process for creating a product. As depicted in FIG. 2 of Parent, the control process involves monitoring, during operation of the manufacturing process, product parameters. If a so-called primary parameter is outside a "selected range", an adaptation process shown in FIG. 3 is performed. If a secondary parameter is determined to be outside a selected range, an alert is generated to an operator of a machine, suggesting to the operator that an adjustment be made.

Atkinson is directed to a power conservation method for a portable computer having an LCD display by monitoring conditions and operating parameters of the computer.

Neither Parent nor Atkinson teaches or suggests performing an off-line optimization analysis including optimization experiments to optimize a quality of service measure and an operating condition of a device or system. Nor does either reference teach or suggest performing a variance analysis on results from the optimization experiments and generating, from results of the optimization experiments, first data relating each of the plurality of control factors to the quality of service measure and second data relating each of the plurality of control factors to the operating condition of the device. Parent and Atkinson describe or suggest monitoring a plurality of parameters, but each parameter in isolation, whereas the present invention involves considering how all parameters relate to each other (not each in isolation) and then deciding how to adjust the system to obtain optimal performance. This distinction is reflected in, for example, sub-paragraph (c) of claim 1.

Further still, both Parent and Atkinson do not teach or suggest generating management profile information relating the quality of service measure and the operating

conditions of the device based on results of the variance analysis, the first data and the second data.

Again, the present invention involves joint consideration of multiple variables to optimize a quality of service measure and operating condition (e.g., power consumption) of the device or system. Unlike the cited references, a system employing these techniques will constantly shift economy of the system by looking at all factors at once and decide how to adjust the system operation.

For these reasons, it is respectfully submitted that claims 1-25 are in condition for allowance. The Examiner is cordially invited to telephone the undersigned in the event there are any further questions or comments.

Also filed herewith is an excess claim fee payment in the amount of $150 for three total claims in excess of the twenty-two previous paid for. Applicant hereby petition for any extension of time which may be required to maintain the pendency of this case, and any required fee for such extension is to be charged to Deposit Account No. 05-0460.

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